UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

JERRY EUBANKS, et al.,)	
Plaintiffs,)	
VS.)	Case No. 05 CV 1361 JCH
COTTRELL, INC. Defendant.)))	

This Matter is before the Court on Defendant's Motion to Strike Plaintiff's Expert (Doc. No. 70), filed December 8, 2006. Also before this Court is Plaintiff's Motion for a Protective Order (Doc. No. 75), filed December 29, 2006.

ORDER

For the last four months, the parties have disagreed over whether Plaintiff's expert, Linda Weseman ("Weseman"), must subject herself to a full cross-examination by Defendant. Nearly two months ago, the Court ordered Weseman to make herself subject to cross-examination on a variety of topics. (Court's Order of Nov. 17, 2006 Doc. No. 58). Weseman failed to comply with this Order. Despite Weseman's failure to comply, the Court gave Plaintiffs until December 29, 2006 to produce her for deposition. (Order of December 13, 2006, Doc. No. 72). To date, Plaintiffs have not produced Weseman for cross-examination.

In view of Plaintiff's failure to abide by the Court's Orders, Weseman will be barred from testifying in this case. In a related case, Chief Judge Carol Jackson also disqualified Weseman for failing to testify on the same topics at issue before this Court. (See 4:05-CV-1852 CEJ, Order, Doc.

No. 94).1

The Court will, however, give Plaintiff thirty days to designate a new expert and will issue a

second amended case management order. Furthermore, the Court also notes that in the event the

Plaintiffs indicate that they wish to retain a new expert, the Court will consider, upon motion by

Defendant, whether Plaintiffs should be ordered to pay the expenses of Defendant incurred in reliance

on the Weseman report.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Strike Linda Weseman (Doc. No.

70) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant's Motion to Exclude Linda Weseman under

Daubert (Doc. No. 52) is **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff's Motion for Protective Order (Doc. No. 75)

is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Second Motion for Extension of Time to

File Reply (Doc. No. 78) is **GRANTED** and Plaintiffs have until **Friday**, **January 26**, **2007** to file

a Reply.

Dated this 16th day of January, 2007.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE

¹Should the Plaintiffs need a more detailed explanation of why Weseman is being excluded,

the Court directs them to see Chief Judge Jackson's order.

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